MARY GALLAGHER

IBLA 74-210 Decided August 9, 1974

Appeal from a decision by the Alaska State Office, Bureau of Land Management, rejecting Alaska Native allotment application AA-7456.

Affirmed as modified.

Alaska: Indian and Native Affairs--Alaska: Land Grants and Selections--Indian Allotments on Public Domain: Lands Subject to--Indian Allotments of Public Domain: Settlement--Withdrawals and Reservations: Effect of

Where the revocation of a withdrawal order provides that "[t]he lands released from withdrawal by this order shall not be subject to application, location, settlement, entry or other forms of appropriation under the public land laws until further order of an authorized officer of the Bureau of Land Management," land affected by the revocation is not opened to settlement under the Alaska Native Allotment Act of May 17, 1906, by an order opening the land for State selection.

Alaska: Native Allotments -- Withdrawals and Reservations: Generally

An Alaska Native allotment application will be rejected where the land in the application has been closed to entry during the entire period the applicant alleges occupancy.

APPEARANCES: Russell J. Gallagher, Esq., Gallagher, Cranston & Snow, Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Mary Gallagher has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated January 18, 1974, rejecting her Alaska Native allotment application filed under the Act of May 17, 1906, 34 Stat. 197, as amended, 43 U.S.C. § 270-1-270-3 (1970). 1/ The application is for land on Long Island in Chiniak Bay near the town of Kodiak. The decision rejected the application because: (1) The application was not pending before the Department before December 18, 1971, as required by section 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (Supp. II, 1972); (2) since the land in the application has not been open to settlement and entry subsequent to June 14, 1941, prior to appellant's entry on September 1, 1945, and since the Act of May 17, 1906, as amended, relates only to vacant, unappropriated and unreserved land, the application must be rejected; and (3) the Secretary of the Interior has the discretion to reject allotment applications.

With her statement of reasons for appeal, appellant has submitted a copy of a letter sent to her by the Superintendent, Anchorage Agency, Bureau of Indian Affairs, U.S. Department of the Interior, acknowledging that her application was received on November 26, 1971, prior to the December 18, 1971, deadline. In view of this letter, the portion of the decision rejecting the application because of late filing is vacated, and the decision is so modified to that extent.

Appellant argues that the land involved in this case was open for settlement. She states:

> Although the lands may have been withdrawn for military purposes in 1941, the occupancy by Mrs. Gallagher of the allotment lands from 1945 up to 1961 gave her and her family a preference right to the lands in question. From 1961 through 1966 officials of the Bureau of Land Management in Anchorage, Alaska office clearly and unequivocally made a decision to open the land to the filing of Native

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1/ This Act has been repealed by section 18(a), Alaska Native Claims Settlement Act, 85 Stat. 710, 43 U.S.C. § 1617(a) (Supp. II, 1972); applications pending before this Department at the time of the Act, however, could be processed if the applicant so elected.

> Land Allotments and other applications including selections by the State of Alaska under the Alaska Statehood Act. In 1961 they accepted a selection application from the State of Alaska and from that point up to 1966 had correspondence * * * with the State at various times as the files of the Bureau of Land Management reflect. There was no suggestion or indication whatsoever that the lands which the State of Alaska sought to select were not open for selection nor was there any indication by the Bureau of Land Management that the lands were open for selection by the State only. That official and belated directive came from the bureau of Land Management in 1968.

The Act of May 17, 1906, authorized the Secretary of the Interior, in his discretion and under such rules as he may prescribe, to make allotments to native Alaskans who have made substantially continuous use and occupancy of vacant, unappropriated and unreserved land in Alaska. 43 U.S.C. § 270-1 (1970) [repealed]. No rights can be gained by an occupancy made on land which is withdrawn from native allotment settlement.

The order opening the land for State selection, the filing of an application by the State of Alaska, and its consideration by BLM did not open the land to native allotment settlement as appellant contends.

Whether public land is vacant, unappropriated and unreserved may be determined by referring to statutes, regulations, published orders and public land records kept by the Bureau of Land Management. Phoenix v. Reeves, 14 IBLA 315, 324, 81 I.D. 65, 68-69 (1974); John C. Amonson, 8 IBLA 346 (1972). Informal statements and actions by Departmental employees cannot change the land status. Id. The public land records here indicate that Long Island has been withdrawn from appropriation under the Act of May 12, 1906, continuously at least since June 14, 1941. Exec. Order No. 8789, 6 F.R. 2942 (1941); Public Land Order (P.L.O.) No. 1297, 21 F.R. 2981 (1956); P.L.O. No. 1297 revoked the 1941 Executive Order withdrawal and released Long Island from withdrawal for military purposes but provided that:

> The lands released from withdrawal by this order shall not be subject to application, location, settlement, entry or other forms of appropriation under the public-land laws until further order of an authorized officer of the Bureau of Land Management.

The only further order affecting Long Island was a 1968 order by the Alaska State Director, opening the land for state selection. 33 F.R. 2942 (1941). The land remained closed to all other types of location. Harold J. Naughton, 3 IBLA 237, 241, 78 I.D. 300, 302 (1971). Acceptance and consideration 2/ of Alaska's State selection application is not an "order" as required by P.L.O. No. 1297, which would open the land to settlement and appropriation as a native allotment. Appellant has acquired no right to public lands, since the land she applied for has been closed to settlement under the Act of May 12, 1906, continuously since the inception of her occupancy. Arthur C. Nelson (On Reconsideration), 15 IBLA 76 (1974); Harold J. Naughton, supra. See Secretarial Directive of October 18, 1973; Georgianna A. Fisher, 15 IBLA 79 (1974).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified herein.

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Joan B. Thompson
Administrative Judge

We concur:

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Frederick Fishman
Administrative Judge

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Edward W. Stuebing
Administrative Judge

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2/ The filing of a state selection application has a segregative effect in accordance with the provisions of the regulations. 43 CFR 76.16 (1963), now renumbered 43 CFR 2091.6-4 (1973).